

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHAEL BROWN  
Deputy Attorney General  
4 State Bar No. 231237  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2095  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-195

12 **MARTA C. POLLACK**  
13 **AKA, MARTA C. FRANCO**  
**AKA, MARTA C. FERNANDEZ**  
14 **34699 Wintersweet Lane**  
**Winchester, CA 92596**

**ACCUSATION**

15 **Registered Nurse License No. 686887**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about August 18, 2006, the Board of Registered Nursing (Board) issued  
24 Registered Nurse License No. 686887 to Marta C. Pollack, also known as Marta C. Franco, and  
25 Marta C. Fernandez (Respondent). The Registered Nurse License was in full force and effect at  
26 all times relevant to the charges brought herein and will expire on January 31, 2010, unless  
27 renewed.

28 ///

1

2

## 4

5

8

11

12

14

15

16

19

24

1       8.    Health and Safety Code section 11170 states:

2        “No person shall prescribe, administer, or furnish a controlled substance for himself.”

3       9.    Health and Safety Code section 11173 states, in pertinent part:

4       “(a) No person shall obtain or attempt to obtain controlled substances, or procure or  
5 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,  
6 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

7                               **COST RECOVERY**

8       10.   Section 125.3 provides, in pertinent part, that the Board may request the  
9 administrative law judge to direct a licensee found to have committed a violation or violations of  
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
11 enforcement of the case.

12                              **CONTROLLED SUBSTANCES**

13       11.   “Hydromorphone,” is the generic name for Dilaudid. It is a Schedule II controlled  
14 substance as designated by Health and Safety Code section 11055(b)(1)(k) and is categorized as a  
15 dangerous drug pursuant to section 4022.

16                              **FACTUAL SUMMARY**

17       12.   On or about June 27, 2008, Respondent was enrolled in the Board’s Diversion  
18 Program. On or about July 3, 2009, Respondent was terminated from the program, as a public  
19 risk for failure to comply with the terms and conditions of her diversion program contract.  
20 Respondent failed to attend nurse support group meetings, failed to return telephone calls to her  
21 clinical case manager at Maximus, and failed to call FirstLab to see if she had to submit to  
22 random drug screening.

23                              **FIRST CAUSE FOR DISCIPLINE**

24                              **(Obtained or Possessed a Controlled Substance by Fraud or Deceit)**

25       13.   Respondent is subject to disciplinary action under section 2761, subdivision (a), as  
26 defined in section 2762, subdivision (a), for violating Health and Safety Code section 11173,  
27 subdivision (a), in that in early 2008, while employed and working as a registered nurse in the

28    ///

1 Intensive Care Unit at Valley Medical Center, in Wildomar, CA (VMC), Respondent obtained or  
2 possessed controlled substances by fraud, deceit, misrepresentation or subterfuge, as follows:

3 a. Respondent, by her own admission, admitted that she diverted Dilaudid from work  
4 for approximately five and a half months. She would take it home after work and inject herself to  
5 help "numb herself out." Respondent admitted that she stole up to 15 doses of Dilaudid per week  
6 and used it at least three to four times per week.

7 b. Respondent, by her own admission, admitted that she administered only partial doses  
8 of the pain medication to patients and kept the rest for her own use. She admitted that she would  
9 inject IM, 8 mg./day four days in a row.

10 c. On or about June 8, 2008, Respondent was confronted by her manager of diverting  
11 Opiates from the Pyxis. She initially denied the alleged diversion.

12 d. On or about June 9, 2008, Respondent was asked to take a urine test and tested  
13 positive for Opiates. She was terminated that day.

#### 14 SECOND CAUSE FOR DISCIPLINE

##### 15 (Administered or Furnished Controlled Substances to Oneself)

16 14. Respondent is subject to disciplinary action under section 2761, subdivision (a), as  
17 defined in section 2762, subdivision (b), for violating Health and Safety Code section 11170, in  
18 that in early 2008, while employed and working as a registered nurse in the Intensive Care Unit at  
19 VMC, Respondent administered or furnished controlled substances to herself. Complainant refers  
20 to, and by this reference incorporates, the allegations set forth above in paragraph 12, inclusive, as  
21 though set forth fully.

#### 22 DISCIPLINARY CONSIDERATIONS

23 15. In order to determine the degree of discipline, if any, to be imposed on Respondent,  
24 Complainant alleges the following:

25 a. On or about March 13, 2000, Respondent was convicted of one gross misdemeanor  
26 count of violating NRS 199.480, 200481 (conspiracy to commit battery), in the criminal  
27 proceeding entitled *The People of the State of Nevada v. Marta C. Franco* (Dist. Ct. of NV Clark  
28 County, 2000, No. C-157444). The Court sentenced Respondent to one (1) year in the Clark

1 County Detention Center, ordered to pay a fine; said sentenced suspended. Respondent was  
2 placed on probation for three (3) years, with terms and conditions. The circumstances  
3 surrounding the conviction are that on or about April 16, 1998, Respondent willfully and  
4 unlawfully conspired and agreed to commit the crime of battery and used force or violence on  
5 A.F and/or J. F.

6 b. On or about February 4, 1986, Respondent was convicted of one misdemeanor count  
7 of violating 38 16-A3A (retail theft), in the criminal proceeding entitled *The People of the State of*  
8 *Illinois v. Marta Fernandez* (Cir. Ct. IL Cook County, 1986, No. 84300780301). The Court  
9 placed Respondent on one (1) year supervision, with terms and conditions. The circumstances  
10 surrounding the conviction are that on or about December 24, 1984, Respondent was arrested by  
11 the Northridge Police Officers for retail theft, in Northridge, Illinois.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Registered Nurse License No. 686887, issued to Respondent.  
16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
17 enforcement of this case, pursuant to section 125.3;  
18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: 10/7/09

20 *for* *Grace Benum*  
21 LOUISE R. BAILEY, M.Ed., RN  
22 Interim Executive Officer  
23 Board of Registered Nursing  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant